

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMILIO NARIT Y FALLAR, @ “NELIO AND DODONG”, ACCUSED-APPELLANT.

G.R. No. 77087. May 23, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This case is before Us for the automatic review of the decision in Criminal Case No. 4552 of Branch 3 of the Regional Trial Court of Bohol, 7th Judicial Region, finding the accused guilty of the crime of murder as charged in an Information the pertinent portion of which reads:

.....

"That, on or about the 10th day of April, 1986 in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery, evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously, with the use of a wooden club, attack, assault and hit one Timoteo Morales thereby inflicting upon the latter the following physical injuries:

- * LACERATED WOUND, OBLIQUE 7 CM AT FRONTO-PARIETAL AREA
- * LACERATED WOUND OBLIQUE 5 CM MAXILLO-FACIAL AREA
- * HEMATOMA 2 X 3 CM LOWER LIP
- * PUNCTURED WOUND 2 X 3 CM NASAL BRIDGE
- * SCALP HEMATOMA AND CLOTS PARIETAL MIDDLE PORTION
- * LINEAR FRACTURE 14 CM FRONTO-PARIETAL WITH CHIP FRACTURE 3 X 4 CM RT. FRONTAL
- * HEMATOMA BRAIN SUBSTANCE, FRONTAL WITH MACERATION OF BRAIN SUBSTANCE NEAR THE FLOOR OF THE ANTERIOR CRANIAL FOSSA
- * INTRACRANIAL HEMORRHAGE 50-60 M
- * COMMINUTED FRACTURE ROOF OF ORBIT, SPEHENOID (sic), FLOOR OF ANTERIOR CRANIAL FOSSA
- * LINEAR FRACTURE 3 CM LEFT FRONTAL

which injuries directly caused his death, to the damage and prejudice of his heirs in an amount to be proved during the trial of the case.

All acts committed contrary to the provisions of Article 248 of the Revised Penal Code and committed with qualifying aggravating circumstance of treachery, evident premeditation and recidivism, the accused having been convicted by final judgment of the crimes of Slight Physical Injuries by the Municipal Trial Court of

Tagbilaran City on October 14, 1985 and Frustrated Homicide by the Regional Trial Court of Bohol, Branch III on March 3, 1982.

City of Tagbilaran, Philippines, May 26, 1986.”[1]

.....

and sentencing him to suffer the Penalty of DEATH and to indemnify the heirs of the victim in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency.

The accused-appellant entered a plea of guilty when arraigned on 16 September 1986. He was assisted by Atty. Adriano P. Demalerio of the Citizens Legal Assistance Office (CLAO) of Tagbilaran City. When asked by the court if his counsel explained to him the consequences of his plea the accused answered that he pleaded guilty because aside from the fact that he has no parents or relatives, he would like that the penalty to be imposed be lighter as he knows that he is presently charged of a capital offense of murder. The court then directed the prosecution to present its evidence.

When the case was called for trial on 26 September 1986 for the reception of the evidence for the prosecution, Atty. Demalerio moved to be allowed to withdraw as counsel for the accused on the ground that before this case reached the Office of the City Fiscal of Tagbilaran City, Atty. Isabelo Digaun, also of the CLAO of said City, prepared the necessary affidavits of the witnesses for the prosecution. The court granted the motion and thereupon appointed Atty. J. Albert Tinampay as counsel de oficio, who accepted the appointment.

The prosecution presented five (5) witnesses and offered some documentary exhibits.

The accused did not present any evidence.

After trial, the court below rendered on 25 November 1986 the above Decision,[2] the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered finding accused Emilio Narit y Fallar alias Nelio alias Dodong guilty beyond reasonable doubt of the crime of murder committed in the manner and under the circumstances described in the aforequoted information and as penalized under the provisions of Article 248 of the Revised Penal Code, and taking into account the aforementioned one mitigating circumstance which is offset by two aggravating circumstances alleged in the information and proven during the trial, the Court hereby sentences accused Emilio Narit y Fallar alias Nelio alias Dodong to suffer the penalty of DEATH and to indemnify the heirs of Timoteo Morales in the amount of P12,000.00, Philippine currency without subsidiary imprisonment in case of insolvency therefor pursuant to and in accordance with Article 39 of the Revised Penal Code as amended by R. A. 5465 and to pay the costs. x x x"

The facts of the case as summarized by the trial court are as follows:

"The first witness of (sic) the prosecution presented was Dr. Martial Escobia, Jr., 30 years old, married, resident physician of the Governor Celestino Gallares Memorial Hospital, and a resident of Graham Ave., City of Tagbilaran, who declared that on April 10, 1986, he conducted an autopsy of deceased Timoteo Morales at the Celestino Gallares Memorial Hospital, Tagbilaran City. The patient, Timoteo Morales, was admitted in the emergency room but expired eight minutes after admission. That was the reason that an autopsy was conducted to determine the cause of death. Dr. Escobia, Jr. declared that after the autopsy was conducted, an autopsy report was issued which was marked Exhibit "A" for the prosecution and the findings of said autopsy states as follows:

'April 10, 1986

'AUTOPSY REPORT: MORALES, TIMOTEO

Lacerated wound, oblique 7 cm. at fronto-parietal area

Lacerated wound oblique 5 cm. maxillo-facial area

Hematoma 2 x 3 cm[.] lower lip

Punctured wound 2 x 3 cm. nasal bridge

Scalp hematoma and clots parietal, middle portion

Linear fracture 14 cm[.] frontoparietal with chip fracture 3x4 cm. rt. frontal

Hematoma brain substance, frontal with maceration of brain substance near the floor of the anterior cranial fossa

Intracranial hemorrhage 50-60 m.

Comminuted fracture roof of orbit, sphenoid, floor of anterior cranial fossa

Linear fracture 3 cm[.] left frontal

(SGD.) MARCIAL E. ESCOBIA, JR., M.D.

Medico-legal Officer

(SGD.) JUANITA A. ARCAY, M.D.

Medical Specialist

Pathologist

GCGMH, City of Tagbilaran

Aside from the autopsy report a certificate of death was also issued and likewise signed by Dr. Marcial Escobia, Jr. and the same was marked Exhibit "B" for the prosecution wherein the cause of death states, as follows:

"Cardio respiratory arrest, antecedent cause intracranial hemorrhage"

Dr. Escobia, Jr. identified the autopsy report marked Exhibit "A" as well as of the certificate of death marked Exhibit "B".

The second witness for (sic) the prosecution presented was Heracleo Salisid, 29 years old, married, driver and a resident of Dao District, Tagbilaran City, who declared that on April 10, 1986, at about 6:00 o'clock in the morning he was in his home. After a while he left his home to get the truck he was driving which was parked and located at Callares Street, City of Tagbilaran. His house is in front of the residence of a certain Darunday. Before reaching Arnoldus along Clarin Street leading to the municipality of Corella, Bohol, while he was still at the yard of his house preparing to leave, there was an unusual incident that transpired. He first heard a crashing sound of a bicycle and he turned around towards the direction where the crashing sound came from and he saw an old man lying flat on the ground being beaten by a person. He was only about ten (10) meters to the old man lying flat on the ground at the right side of the road towards the direction of the municipality of Corella. He saw a man who kept on beating the old man with the use of a coco lumber. Witness identified the coco lumber which appears to be liked a club with a wooden handle which was marked Exhibit "C" to be the same wooden coco lumber that was used by the man in beating the old man lying flat on the ground. He could not count how many times the old man was beaten because he did not continue looking at the scene because he was afraid. He knew the name of the man who beat that old man to be Emilio Narit thru the radio broadcast. After that incident he was summoned by the police of the City of Tagbilaran. At first he did not mind the summons but because of the advice of his father to

just testify what he saw during the incident he was prevailed upon. After the advice of his father he went to the police station of Tagbilaran City about two to three days after the incident. During the police investigation, he told the police what he saw. At the time he was investigated by the police the accused was present and he identified the person who beat the old man on April 10, 1986 at 6:00 o'clock in the morning to be the same person who is the accused in this case and the witness identified said accused in the courtroom wearing blue T-shirt who answered the name of Emilio Narit, the accused. When he saw the accused at the time of the incident the accused was wearing a yellow short pants but he forgot the color of his T-shirt. He could easily recognize the accused who beat the old man lying flat on the side of the road, because the accused had a scar on his nose.

On cross-examination by Atty. J. Albert R. Tinampay, the witness declared that the bridge of the nose of the accused is broken maybe that was a scar. He learned later from information that the accused was beaten before which caused a scar on the bridge of his nose. When he was investigated by the police he saw that the accused in this case was present. He had a deformed nose. Before April 10, 1986, he used to see Emilio Narit at Barangay Cancatac, Corella, Bohol, because he used to drive his truck in said barangay but he knew the accused by his facial appearance. When his affidavit was taken by the police he saw Emilio Narit, the accused in this case, two to three days after the incident. Even he already knew Emilio Narit he had no nerve to stop him from beating the old man, because he was afraid. After he saw the incident he proceeded to get his truck. He did not report the incident to the police because there were other persons who were present.

On re-direct examination by Fiscal Montes, witness Salisid declared that after the accused beat the old man several times in that morning of April 10, 1986, the accused passed by him and said to him 'Would you take side?' That statement added to his fear. That is why he left the scene of the incident.

The next witness presented was P/Lot. Jesus Niluag for the prosecution (sic), INP member of Tagbilaran Police Force, resident of Dao District, who declared that he has been connected with the INP Tagbilaran Police Station for thirty years; that on April 10, 1986 at 6:00 o'clock in the morning he was on duty from 12 midnight to 8:00 o'clock in the morning. At about 6:00 o'clock in the morning of April 10, 1986 he received a telephone call from the barangay captain of Dao District informing him of a person being beaten on the side of the road. So, he responded the call and he went to the place with P/Cpl. Bagotchay, Pat. Ligue, Pat. Moncuna and Pat. Millanar. He proceeded to the place which is Dao District, Tagbilaran City. When they arrived at the place of incident at Dao District the victim was no longer at the scene of the crime. What he did was to conduct a search around the scene of the crime and as a result of his search he found a coco lumber about three meters from the blood clots at the side of the road. The coco lumber appears to be liked with 3-edge corner with a handle. At the time they recovered this coco lumber with a handle which appears to be a club it had blood clots as large as a waste of carabao manure. The said coco lumber with a handle was shown to Lt. Niluag which he identified to be the same coco lumber which they saw from the scene of the crime and the bloody portion on the tip of the coco lumber was due to blood clots. At the scene of the crime, they also saw a bicycle about four meters to the place where the blood clots were located. According to information, the bicycle was owned by the victim. After the testimony of P/Lot Niluag, Fiscal Montes manifested to the Court if counsel of the accused would admit the genuineness of the decision of Criminal Case No. 2975, entitled, People vs. Emilio Narit for frustrated homicide wherein said accused was convicted by the Court of First Instance, Branch III, Tagbilaran City to an indeterminate penalty of imprisonment of from four months one day of arresto mayor to two years four months and one day of prision correccional, and another decision for slight physical injuries docketed as Criminal Case No. 2513 of the Municipal Trial Court of the Cities, Tagbilaran City, Branch I, entitled, People of the Philippines vs. Nelio Narit and Orte Bayod wherein the accused were sentenced to suffer an imprisonment of 12 days to which Atty. Tinampay admitted the genuineness of the two decisions - the first decision was marked as Exhibit "D", Criminal Case No. 2975 and the succeeding pages as Exhibits "D-1" and "D-2", and the decision in Criminal Case No.

2513 was marked as Exhibit "E" and the second page as Exhibit "E-1".

The next witness of the prosecution was Lopesina Pague, 38 years old, farmer and resident of La Libertad, Baclayon, Bohol, who declared that before she got married her family name was Narit; that she knows accused Emilio Narit because he is her younger brother. The accused was residing in the month of March 1986 in the house of her parents-in-law located at barangay La Libertad, Baclayon, Bohol, about 7 kilometers to the City of Tagbilaran. At dawn of March 6, 1986 she was at home and at that time her younger brother, the accused in this case, got angry and her husband was wounded because the accused waylaid him and hurled stones at him. That is why her younger brother, the accused, was beaten by her brother-in-law. Her younger brother Emilio Narit was brought to the hospital for he suffered injuries. On March 6, 1986 in the morning while she was attending her brother Emilio Narit, the accused in this case, at the hospital she had a conversation with him and in their conversation with Emilio Narit, the latter harbored hatred to two persons who did not help him defray the expenses of the hospitalization and he mentioned the name of Timoteo Morales who did not help him in the expenses of hospitalization.

On cross examination, she declared that she has no hatred to Emilio Narit because they were living in the same house although he attacked her husband. She did not ask Emilio Narit why he hated Timoteo Morales but Emilio Narit only told her that he hated Timoteo Morales because he did not help him in defraying the hospitalization expenses.

The next witness of the prosecution was Eusebia Morales, 60 years old, married, housekeeper and resident of barangay La Libertad, Baclayon, Bohol, who declared that she knows Timoteo Morales, the victim in this case, because said victim was her husband. She knows accused Emilio Narit because he is her nephew. Her husband Timoteo Morales died on April 10, 1986. Before his death his occupation was a carpenter in Tagbilaran City. He was working in the residence of Eddie Racho. On April 10, 1986 before his death he reported for work. He left their home before 6:00 o'clock in the morning. From their residence to the place of his work Timoteo Morales rode on a bicycle but he was killed in Dao District about 10 kilometers from La Libertad, Baclayon, Bohol, their place of residence.

After the testimony of Eusebia Morales, the prosecution formally offered its exhibits, viz: Exhibit A, autopsy report of Dr. Marcial Escobia, Jr. on the body of the late Timoteo Morales; Exhibit B, death certificate of Timoteo Morales; Exhibit C, a piece of wooden club (coco lumber); Exhibits D, D-1, D-2, decision in Criminal Case No. 2975; Exhibits E and E-1 decision in Criminal Case No. 2513. Thereafter, the prosecution rested its case."

In holding that the crime committed was Murder, the trial court was of the opinion and so held that evident premeditation and treachery attended the killing of the victim. The presence of evident premeditation was inferred from the testimony of Lopesina Pague. According to the trial court:

". . . It has been established and proven through prosecution witness Lopesina Pague who declared that, while she attended to her younger brother, the accused, Emilio Narit y Fallar, in the hospital because the latter suffered injuries, Emilio Narit y Fallar expressed to her that he hated Timoteo Morales because he did not help him defray the expenses for his hospitalization. It was found out through this witness, Lopesina Pague, that Emilio Narit, sometime in March 1986, was residing with her in the house of her parents-in-law at Barangay La Libertad, Baclayon, Bohol; that at dawn of March 6, 1986 her husband was wounded by Emilio Narit because the latter waylaid her husband on the way and hurled stones at him thereby wounding her husband. As a result her younger brother, Emilio Narit, was beaten by her (sic) brother-in-law and Emilio Narit suffered injuries. Hence, he was brought to the hospital.

Evident premeditation is alleged in the information. In the case of U.S. vs. Gil, 13 Phil. 353, the Supreme Court

ruled, that to justify the inference of deliberate premeditation there must be a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and sufficient time to allow the conscience of the actor to overcome the resolution of his will if he desires to hearken to its warning. The same ruling was repeated and cited by the Supreme Court in the case of *People vs. Hanasan*, 29 SCRA 534 and *People vs. Diaz*, 555 (sic) SCRA 178.

In this case, when Emilio Narit y Fallar was in the hospital he harbored already an ill-feeling against Timoteo Morales. That was sometime on March 6, 1986 and the crime was committed by the accused against Timoteo Morales on April 10, 1986. As a result of his hatred against Timoteo Morales, accused Emilio Narit y Fallar waylaid Timoteo Morales in the morning of April 10, 1986 at Dao District, Tagbilaran City, which is five kilometers away from the residence of the victim, while the latter was riding on his bicycle on his way to his work as a carpenter in one of the constructions in the City of Tagbilaran. To reinforce the observation of the Court regarding evident premeditation, is that (sic) the wooden club made of coco lumber used by the accused in beating Timoteo Morales to death has a handle which would fit the grip of the hand of the accused. This wooden club was marked in the trial as Exhibit C." (Decision, p. 6; Rollo, 13).

As to treachery, the trial court formulated its conclusion thus:

"The prosecution has also proven beyond reasonable doubt that the crime was committed by treachery, because the attack was sudden. Treachery is defined: There is treachery when the offender may commit any of the crimes against the persons, employing means, methods, or forms in the execution thereof which tends directly and specifically, to insure its execution, without risk to himself arising from the defense which the offended party might commit. This was decided by the Supreme Court in the case of *People vs. Plateros*, 83 SCRA 201. In this instant case, the victim was over 60 years old, defenseless, was suddenly attacked by the accused, who is very much younger in age than the victim. . . ."

However, the trial court observed that since any of the above circumstances would suffice to qualify the killing to Murder, it considered treachery as the qualifying circumstance and evident premeditation as merely a generic aggravating circumstance pursuant to the rule laid down in *People vs. Bordador*, 63 Phil. 305. The other aggravating circumstance taken into account was recidivism. It appreciated the plea of guilty by the accused as a mitigating circumstance; it noted, however, that the same was offset by the two aggravating circumstances.

On 25 February 1987, following his receipt of the notice to file appellant's brief, Atty. J. Albert Tinampay, counsel de oficio for the accused-appellant, filed a motion to excuse accused-appellant from filing his brief alleging therein that he "could not find any error that may have been committed by the court a quo, in fact the accused-appellant voluntarily pleaded guilty to the charge and refused to present any evidence", and praying that the appeal be considered submitted for resolution.[3]

In the resolution of 28 April 1987 this Court noted the aforesaid motion but relieved Atty. Tinampay as counsel de oficio and appointed Atty. Alfredo M. Duran as the new counsel de oficio for the accused-appellant.[4]

In his letter of 29 September 1987[5] Atty. Duran requested for a period of thirty (30) days, to expire on 29 October 1987, within which to file Appellant's Brief.[6]

In the resolution of 13 October 1987 this Court granted the request of Atty. Duran and considering that the death penalty is no longer imposable in consonance with the provision of Section 19(1), Article III of the 1987 Constitution, hence the death sentence imposed on the accused-appellant has been automatically commuted to reclusion perpetua, granted the accused-appellant thirty days from notice within which to file a written statement, personally signed by him with the assistance of counsel or prison authorities stating whether or not he wishes to continue with his case as an appealed case, failure to do which will cause the dismissal of the case, which shall thereafter be remanded to the trial court for execution of judgment.[7]

On 13 April 1988 Atty. Duran submitted a compliance dated 11 April 1988 to which he attached a statement signed by accused-appellant wherein the latter affirms that he wants his appeal to be pursued.[8]

Accused-appellant finally filed his Brief on 28 November 1990[9] wherein he assigned the following errors:

- "1. The Trial Court erred when it ruled that there was evident premeditation when the accused allegedly committed the crime; and
2. The Trial Court erred when it decided that there was treachery during the alleged attack."

in support of which he submits the following arguments:

"1. The trial court presumed that the accused prepared and planned the entire attack due to the fact that it occurred about a month after the accused was hospitalized, and he allegedly began to harbor some ill feelings against the victim. The presumption is likewise based on the fact that the victim was attacked by the victim using a piece of coco lumber shaped as a club.

Contrary to the conclusion by the trial court, the period between the time the accused was hospitalized and when he allegedly committed the crime was in fact too long for the accused to have kept his anger and to plan the crime. It must be remembered that the accused is not a sophisticated man, or one who can wait for a long time to carefully plan a crime. He was a man prone to act immediately, and if indeed he had attacked the victim, it must have been on the spur of the moment. In the case of *US vs. Ricafort* (1 Phil. 173), it was established that 'premeditation must be based upon external acts, and not presumed from a mere lapse of time'. In the case of *US vs. Banagale* (24 Phil. 69), it was ruled that 'in evident premeditation, the criminal intent must be evidenced by outward acts which must be notorious and manifest'. The premeditation must be evident and not merely suspected (*People vs. Yturriaga*, 86 Phil. 534).

The prosecution failed to establish the same in the case at bar. The trial judge, in his decision, based his conclusion of evident premeditation on three points: that there had been sufficient time, that the accused allegedly waylaid the victim, and that the used a piece of coco lumber which he had shaped into a club. The lapse of time, by itself, do not imply evident premeditation. It was not shown that the accused still harbored the ill-feelings for the long period of time, or that he planned the attack. Neither does the other circumstances relied upon the court. There has been no support of the allegation that the victim was waylaid, nor was there proof that it was the accused who fashioned the piece of coco lumber into a club. The crime occurred in an open place in an inhabited area. If the accused indeed planned the attack, he could have chosen a more secure place, or a deadlier weapon. All these contentions were unsubstantiated, and merely assumed by the trial judge. As such, therefore, it has not been proven that there was evident premeditation of the crime.

2. The trial court likewise erred when it decided that the attack was done with treachery. This court had laid down the rule in the cases of *US vs. Perdon* (4 Phil. 141) and *US vs. Panagilion* (34 Phil. 786) that 'where no particulars are known as to the manner in which the aggression (sic) was made or how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppositions that the accused perpetrated the killing with treachery'. In the case of *People vs. Tumaob*, (83 Phil. 742), it was stipulated that 'the accused must make some preparations to kill the deceased in such a manner as to ensure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate'. In the case of *US vs. Balagtas* (19 Phil. 164), this court ruled that there must be an evidence that the accused had, prior to the moment of killing, resolved to commit the crime. Even the suddenness of the attack is not enough to constitute treachery (*People vs. Maglisang*, GR L-24546).

In the case at bar, it must be remembered that the incident occurred in daylight (at about 6:00 in the morning), in an open place in an inhabited area, thus the victim had seen the accused prior to the alleged attack, and with the use of a clumsy and unwieldy weapon. It must likewise be noted that the victim is not a tottering old man, but rather, a carpenter, thus a decidedly muscular man, on his way to work, refreshed after a night's sleep, and

riding a bicycle which he does almost everyday. The victim saw the accused long before the alleged attack, and knew beforehand that the accused had harbored ill feelings towards him. The attack therefore cannot be termed as treacherous. The victim had been forewarned, and he even had the advantage of speed, because he was riding a bicycle."

and concludes that he could be guilty of the crime of HOMICIDE only, not Murder.

The People, in a 19-page Brief for Plaintiff-Appellee filed by the Office of the Solicitor General on 23 January 1991,[10] agrees with the accused-appellant that the crime committed was simple Homicide since neither evident premeditation nor treachery was proved to have attended the killing of the victim. Elaborating on its solidarity with the accused-appellant, the Solicitor General states:

"1. The essence of premeditation, according to Justice Luis B. Reyes, is that 'the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm Judgment' (L.B. Reyes, *The Revised Penal Code*, Book I, 1981 ed., p. 378, citing *People vs. Durante*, 53 Phil. 363). The prosecution must prove the existence and concurrence of the three requisites of evident premeditation, namely: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the culprit has clung to his determination; and (c) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act (*Ibid.*).

In the instant case, none of the essential requisites constituting evident premeditation had been established. That the accused had reportedly harbored an ill-feeling against Timoteo Morales for the latter's failure to help defray his hospital expenses, as he allegedly intimated to his sister Lopesina Pague on March 6, 1986 while he (accused) was confined in the hospital, assuming it to be true, in itself is not conclusive nor sufficient to prove that the accused had already intended much less been determined to kill Timoteo Morales. And, other than the alleged remark of harboring ill-feeling there was no other evidence which would disclose the true criminal state of the mind of the accused. There was an entire absence of evidence of overt and external acts showing that the accused had meditated and reflected on his intention to commit the crime. The prosecution's evidence did not show the steps that the accused took, after expressing his ill-feeling against the victim, in order that he could kill Morales on that fateful morning of April 10, 1986. Also, that the accused in attacking the victim used a piece of coco lumber shaped as a club is not indicative of premeditation as there was no proof that it was the accused who had fashioned the piece of coco lumber into a club and that he did it precisely to be used in attacking (sic) the victim. Moreover, there was also no proof showing that the accused had indeed planned the attack or that he waylaid the victim.

Indeed, the crime was committed along Clarin Street which is an open place located in an inhabited area. If the accused had really planned the attack, he could have chosen a more secluded place or a deadlier weapon. The evidence showing the circumstances surrounding this case would indicate that it was more of a casual and not a planned encounter between the accused and the victim.

The trial court, therefore, erred in concluding that evident premeditation attended the killing of the victim Timoteo Morales.

2. Likewise, treachery cannot be appreciated against the accused. For treachery to be present, it must be shown that the offender 'employ(ed) means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make' (Article 14, paragraph 16, Revised Penal Code).

And, treachery, like any other element of the crime committed, must be proved by clear and convincing evidence sufficient to establish its existence beyond reasonable doubt; a nebulous atmosphere surrounding the attack is not to be tolerated especially where the liberty and life of an individual is at stake (*People vs. Santos*, 85 Phil. 630).

In the instant case, the testimony of the lone eyewitness, Heracleo Salisi, was limited to the actual beating of the victim by the accused after the victim had already fallen down to the ground; there were no details as to how the incident commenced and developed (vide, *tsn*, October 13, 1986, pp. 1-4, 4-5, 6). The autopsy report (Exhibit "A") and the death certificate (Exhibit "B") presented by the prosecution also did not disclose the nature of the lacerated wounds which killed the victim so as to infer therefrom how he was killed. Besides, the incident occurred in broad daylight, at about 6:00 o'clock in the morning of April 10, 1986, in an open and public road in an inhabited area.

It has been long held, as early as the cases of *U.S. vs. Perdon* (4 Phil. 141) and *U.S. vs. Panagilion* (34 Phil. 786), that 'where no particulars are known as to the manner in which aggression was made or how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppositions that the accused perpetrated the killing with treachery'."

We agree with both the accused-appellant and the Solicitor General that evident premeditation and treachery were not proven in this case.

In *U.S. vs. Gil*, 13 Phil. 530, We ruled that to justify the inference of deliberate premeditation there must be a period sufficient in a judicial sense to afford full opportunity for meditation and reflection, and sufficient time to allow the conscience of the actor to overcome the resolution of his will (*vencer las determinaciones de la voluntad*) had he desired to hearken to its warnings.[11]

The execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a clear judgment.[12]

Three requisites must, therefore, be duly proved before evident premeditation may be appreciated as a qualifying aggravating circumstance, namely: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused has clung to his determination, and (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act.[13] The mere lapse of time is not enough, i.e., premeditation is not to be presumed from mere lapse of time.[14] When it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered to exist.[15]

The foregoing requisites must be established with proof, as clear as that for the crime itself.[16] As was held in *People vs. Torejas*, *supra*, the evidence must be such as to dispel any reasonable doubt as to its existence. The same quantum as is necessary to establish the crime is required; that degree of clarity is indispensable.

The evidence for the prosecution in the instant case miserably failed to meet these requisites. And the conclusion of the trial court on the existence of evident premeditation is based on hasty conjectures and surmises or plain speculations. The testimony of Lopesina Pague that during her conversation with the accused-appellant at the hospital on 6 March 1986 the latter mentioned that he harbored hatred against two persons, one of whom was the victim Timoteo Morales, because they did not help him defray the hospitalization expenses, standing alone, cannot logically and reasonably support a conclusion of a criminal intent on the part of the accused-appellant. An intimation or expression of hatred does not necessarily imply a resolution to commit a crime and a determination to carry it out. A criminal intent cannot be presumed from hatred or ill-will, unless the expression of the latter is accompanied or thereafter followed by outward acts clearly and manifestly showing such intent. Evident premeditation must be based on external acts[17] and must be evident, not merely suspected, indicating deliberate planning. Otherwise stated, there must be a demonstration by outward acts of a criminal intent that is notorious and manifest. Or, as stated in *People vs. Mendova*, 100 Phil. 811. "it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious outward acts evincing determination to commit the crime." [18] No such outward external acts had been shown in this case.

Worse, the trial court allowed itself to be carried away by the fancy of its imagination when it sought to strengthen its conclusion on the presence of evident premeditation by finding that "the wooden club of coco lumber used by the accused in beating Timoteo Morales to death has a handle which would fit the grip of the hand of the accused." By this it impliedly suggested that the accused specially made the club or caused it to be made to be used later to kill Timoteo Morales. To the trial court, the wooden club was evidence of deliberate planning or elaborate preparation for the ambush and manifested an unequivocal resolution to carry out the criminal intent. All these do not rest on proven facts. No witness testified that the accused, or anyone else upon his instruction, made or fabricated the club from a coco lumber at any time during the period from 6 March to 10 April 1986. There is nothing on the record to show that indeed its handle fits the grip of the hand of the accused. Even if that were so, no reasonable and sound conclusion could be drawn that the club was specially made for him. It could fit the grip of the hands of many others.

And now on treachery.

There is treachery when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make, which means that no opportunity was given to the latter to do so.[19] It cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself.[20] For, as held in *U.S. vs. Perdon*[21] where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it can in no way be established from mere suppositions, drawn from circumstances prior to the very moment of the aggression, that an accused perpetrated the killing with treachery.[22] Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault.[23]

As to the attack by the accused in this case on the victim, the People relied completely on the testimony of Heracleo Salisi. Unfortunately, he did not see how it all began. His testimony was limited to the beating of the victim who had already fallen on the ground. He could not provide the details on how the initial attack was commenced and how it developed until the victim fell to the ground. The autopsy report shows that none of the injuries sustained by the victim was located at the back portion of his body.

Furthermore, some circumstances attended the attack which would negate the possibility that the accused-appellant carefully and deliberately planned the killing in a manner that would ensure his safety and success. As both the accused-appellant and the People contend in their respective Briefs, the offense was committed in broad daylight, on a public road and in an inhabited area, with the use of a wooden club. These circumstances, as admitted by the People, would indicate that the meeting between the accused-appellant and the victim "was more of a casual and not a planned encounter," for, if the accused "had really planned the attack, he could have chosen a more secluded place or a deadlier weapon." [24]

Since no qualifying circumstance was proved to have attended the killing of Timoteo Morales, the accused-appellant could be held liable only for homicide which is penalized by reclusion temporal [25] whose duration is from twelve years and one day to twenty years.[26]

The accused-appellant's voluntary plea of guilty should be appreciated in his favor as a mitigating circumstance; [27] however, the aggravating circumstance of recidivism was duly established. Following the rule prescribed in Article 64, par. 1, in relation to par. 4, one offsets the other; consequently, the penalty imposable is the medium of reclusion temporal whose duration is 14 years, 8 months and 1 day to 17 years and 4 months.

Applying the Indeterminate Sentence Law, the accused-appellant may be sentenced to suffer an indeterminate penalty of eight years and one day of prision mayor, as minimum, to fourteen years, eight months and one day of

reclusion temporal, as maximum.

The civil indemnity imposed by the trial court should be increased from P12,000.00 to P50,000.00 conformably with Our ruling in *People vs. Sison*, G.R. No. 86455, September 14, 1990 and in *People vs. Sazon*, G.R. No. 89684, September 18, 1990.

WHEREFORE, judgment is hereby rendered Modifying the decision of the trial court, and as modified, FINDING the accused-appellant Emilio Narit y Fallar guilty beyond all reasonable doubt of the crime of HOMICIDE, as defined and penalized under Article 249 of the Revised Penal Code, for the killing of Timoteo Morales, and applying the Indeterminate Sentence Law, he is hereby SENTENCED to suffer an indeterminate penalty of imprisonment ranging from EIGHT YEARS AND ONE DAY of prision mayor, as Minimum, to FOURTEEN YEARS, EIGHT MONTHS AND ONE DAY of reclusion temporal, as Maximum, with the accessory penalties therefor, and to INDEMNIFY the heirs of Timoteo Morales in the sum of FIFTY THOUSAND PESOS (P50,000.00), without subsidiary imprisonment in case of insolvency.

Accused-appellant should be given full credit for the period of his preventive imprisonment.

Costs de officio.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Rollo, 2-3.

[2] Per Judge Andrew Namocatcat; Rollo, 9-15.

[3] Rollo, 17-18.

[4] Id., 20.

[5] Id., 24.

[6] Ibid.

[7] Rollo, 26.

[8] Id., 28-29.

[9] Id., 46-54.

[10] Rollo, 57 et seq., which are no longer numbered.

[11] See also *People vs. Torejas*, 43 SCRA 158; *People vs. Canial, et al.*, 46 SCRA 634; *People vs. Palacpac*, 49 SCRA 440; *People vs. Renegado*, 57 SCRA 275; *People vs. Manangan*, 59 SCRA 31; *People vs. Tumulip*, 60 SCRA 303; *People vs. Francisco*, 182 SCRA 305.

[12] *People vs. Durante*, 53 Phil. 363, citing *U.S. vs. Abelinde*, 1 Phil. 568.

[13] *U.S. vs. Banagale*, 24 Phil. 69; *People vs. Tingzon*, 47 SCRA 243; *People vs. Ardisa*, 55 SCRA 245; *People vs. Ramoleta*, 56 SCRA 66; *People vs. Cardenas*, 56 SCRA 631; *People vs. Manzano*, 58 SCRA 250; *People vs. Lacao*, 60 SCRA 89; *People vs. Estillore*, 141 SCRA 456; *People vs. Camilet*, 142 SCRA 402; *People vs. Obenque*, 147 SCRA 488; *People vs. Manalo*, 148 SCRA 98.

[14] U.S. vs. Ricafor, 1 Phil. 173.

[15] People vs. Camano, 115 SCRA 688.

[16] People vs. Bautista, 92 SCRA 465; People vs. Obenque, supra; People vs. Molato, 170 SCRA 640.

[17] U.S. vs. Ricafor, supra.

[18] People vs. Alde, 64 SCRA 224; U.S. vs. Banagale, supra.

[19] Article 14, par. 16, Revised Penal Code; People vs. Gimongala, 170 SCRA 632; People vs. Bustos, 171 SCRA 243; People vs. Samson, 176 SCRA 710; People vs. Manzanares, 177 SCRA 427.

[20] People vs. Manalo, 148 SCRA 98; People vs. Gaddi, 170 SCRA 549.

[21] 4 Phil. 141.

[22] See also People vs. Ablao, 183 SCRA 658.

[23] People vs. Durante, 53 Phil. 363; People vs. Cananowa, 92 SCRA 427; People vs. Repe, et al., 175 SCRA 422; People vs. Villapando, 178 SCRA 341.

[24] Brief for Plaintiff-Appellee, p. 14.

[25] Article 249, Revised Penal Code.

[26] Article 27, *ibid.*

[27] Article 13, par. 7, *ibid.*

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